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October 3, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND DELIVERY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

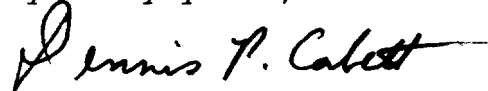
Re: Amendment of Section 73.202(b) Table of
Allotments, FM Broadcast Stations
Lexington, Tennessee
RM-8668

Dear Mr. Caton:

On behalf of Floriplex, Inc., I am transmitting herewith an original and four copies of its Reply Comments in connection with the above-referenced Notice of Proposed Rulemaking, DA 95-1605. Please note that the Technical Report attached to the Reply Comments includes a facsimile signature of Charles M. Anderson. The original signature will be submitted upon receipt.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Dennis P. Corbett

Enclosures

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ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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In the Matter of

Amendment of Section 73.202(b)
Table of Allotments,
FM Broadcast Stations.
(Lexington, Tennessee)

MM Docket 95-122

RM No. 8668

To: Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

REPLY COMMENTS OF FLORIPLEX, INC.

Floriplex, Inc. ("Floriplex"), by its attorneys and pursuant to Section 1.415 of the Commission's rules, hereby submits its Reply Comments in the above-captioned proceeding regarding the Comments and Counterproposal filed by Crossroads Broadcasting (the "Crossroads Counterproposal") and the Counterproposal filed by Richard Bennett (the "Bennett Counterproposal").

Floriplex filed the Petition for Rule Making that initiated this proceeding, and continues to strongly support the proposal to amend Section 73.202(b) of the Commission's rules, the FM Table of Allotments, to add FM Channel 243A to Lexington, Tennessee. Lexington is located in Henderson County, Tennessee and has a 1990 U.S. Census population of 5,810 persons. The allotment of Channel 243A to Lexington will further the public

interest by providing the community with an additional aural transmission service to compete with an existing AM/FM combination in Lexington, currently licensed to Lexington Broadcast Service, Inc. ("LBSI"). The Crossroads Counterproposal seeks to allot Channel 243A to a place called Parker's Crossroads, Tennessee, and the Bennett Counterproposal proposes the allotment for a place called Henry, Tennessee.

As a threshold matter, Floriplex emphasizes that neither Parker's Crossroads (population 161) nor Henry (population 317) are sufficiently sizable, distinct places to justify allotment of Channel 243A in lieu of allotting that channel to Lexington. Lexington's population is 36 times the population of Parker's Crossroads and some 18 times the population of Henry. To be economically viable, any station allotted to Parker's Crossroads will have to depend primarily on revenues derived from Lexington. It cannot seriously be contended that 161 people can generate enough advertising revenue to keep a station afloat financially. Likewise, a station licensed to Henry will be heavily dependent on revenue from the much larger nearby communities of Paris, Tennessee (9,332 persons, 4 existing radio stations) and McKenzie, Tennessee (5,168 persons, 2 existing radio stations). As a matter of law, the Commission should therefore treat Parker's Crossroads as if

it were another Lexington allotment and Henry as if it were another Paris or McKenzie allotment.^{1/}

Such a conclusion would be particularly appropriate given the thin showings put forward concerning the two alternative allotment proposals. As set forth in the Crossroads Counterproposal, Parker's Crossroads consists of an intersection of two highways where approximately 161 persons reside. Crossroads Broadcasting asserts that "the community maintains a city park, a local post office, and is home to a number of businesses, civic clubs, and churches." Crossroads Counterproposal at 2. Thereafter, the Crossroads Counterproposal lists two churches, two civic clubs, and several small businesses. Crossroads Broadcasting fails to demonstrate, however, that the businesses identify themselves in any manner with the Parker's Crossroads community. In fact, many of the businesses cited in the Crossroads Counterproposal are simply gas stations, convenience stores and motels providing services to

^{1/} It should be noted that while the Crossroads Counterproposal does not identify the principals of Crossroads Broadcasting, the Crossroads Counterproposal was filed on behalf of Crossroads Broadcasting by the law firm of McCampbell & Young, Knoxville, Tennessee -- the same firm which, according to available Commission records, represents LBSI, the licensee of Stations WDXL(AM) and WZLT(FM), Lexington, Tennessee. The possibility is therefore raised that the Crossroads Counterproposal is a delay mechanism indirectly employed by an existing licensee to impede the implementation of a competing FM service in its community. It is also curious that the Crossroads Counterproposal is critical of Floriplex for stating its "present intention" to construct a Lexington facility. In paragraph 2 of the Appendix to the Notice in this matter, the FCC asked Floriplex to state precisely such a "present intention."

Interstate 40 travelers. Therefore, it is obvious that a radio station licensed to Parker's Crossroads, Tennessee will in fact essentially serve the nearby community of Lexington, Tennessee, and will receive its financial support from businesses located in that much larger, well established community.

The Bennett Counterproposal is similarly deficient. The Bennett Counterproposal proposes to allot Channel 243A at Henry, Tennessee, as that community's first local service. The Bennett Counterproposal claims that the community of Henry, Tennessee has a population of 317 and provides certain local services, but asserts only generally that "Henry has a number of businesses, both retail and industrial, located in or otherwise identified with Henry." The Bennett Counterproposal fails to specifically list retail or industrial businesses which could provide an adequate economic base to support an FM radio station serving a locality with only 317 residents. As with Parker's Crossroads, economic realities will drive a "Henry" station to serve the larger communities of Paris and McKenzie.

Assuming arguendo that the Commission were to find Parker's Crossroads and/or Henry to constitute separate communities for purposes of its allotment rules, the Channel 243 allotment at issue here should clearly be made to Lexington.^{2/}

^{2/} To the extent Henry is found to be a community, Floriplex submits that an alternate channel is available for allotment there. Attachment A hereto is the Technical Report of Charles M. Anderson. Mr. Anderson states that alternate Channel 284A is available for allotment to Henry in light of the Commission's action in a rule making proceeding
(continued...)

Lexington dwarfs both Parker's Crossroads and Henry in size and importance. It is a thriving, well established community of nearly 6,000 people which can both support this station and benefit from the competition a new station would bring. Any presumption that places of 161 or 317 residents should prevail over a community of 5,810 cannot be applied uncritically. As the Courts^{3/} have made clear, the Commission must adapt to the rapidly evolving broadcast marketplace, which includes the prospect of satellite-delivered radio stations and a regulatory world without local ownership restrictions.^{4/} Here, it makes no sense to entertain the fiction that the public interest would be better served by allotting a scarce radio frequency to a tiny locality which cannot economically support a station, at the expense of a much larger community that clearly can do so. Indeed, granting preferences to such small localities only encourages gamesmanship and provides existing broadcasters in

^{2/} (...continued)

involving Union City, Tennessee. As Mr. Anderson's statement makes clear, new channels are therefore available for both Henry and Lexington.

^{3/} In Bechtel v FCC, 10 F.3d 875 (D.C. Cir. 1993), for example, the Court overturned the Commission's long-established preference scheme for ownership/management integration proposals in comparative hearings on grounds that the preferences awarded made no sense in the current regulatory environment. The Court systemically dismissed all of the benefits cited by the Commission in defending its preference scheme.

^{4/} Congress is currently considering legislation, H.R. 1555, which would eliminate local and national ownership restrictions for radio stations.

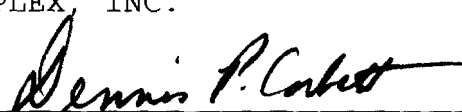
larger communities with ways to potentially keep out new, direct competition.

For the foregoing reasons, Floriplex respectfully urges the Commission to dismiss the Comments and Counterproposal filed by Crossroads and the Counterproposal filed by Bennett, or in the alternative to allot Channel 284A to Henry and dismiss the Crossroads Counterproposal, and to adopt expeditiously a Report and Order amending Section 73.202(b) of its rules to add FM Channel 243A to Lexington, Tennessee.

Respectfully submitted,

FLORIPLEX, INC.

By:



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October 3, 1995

Its Attorneys

ATTACHMENT A

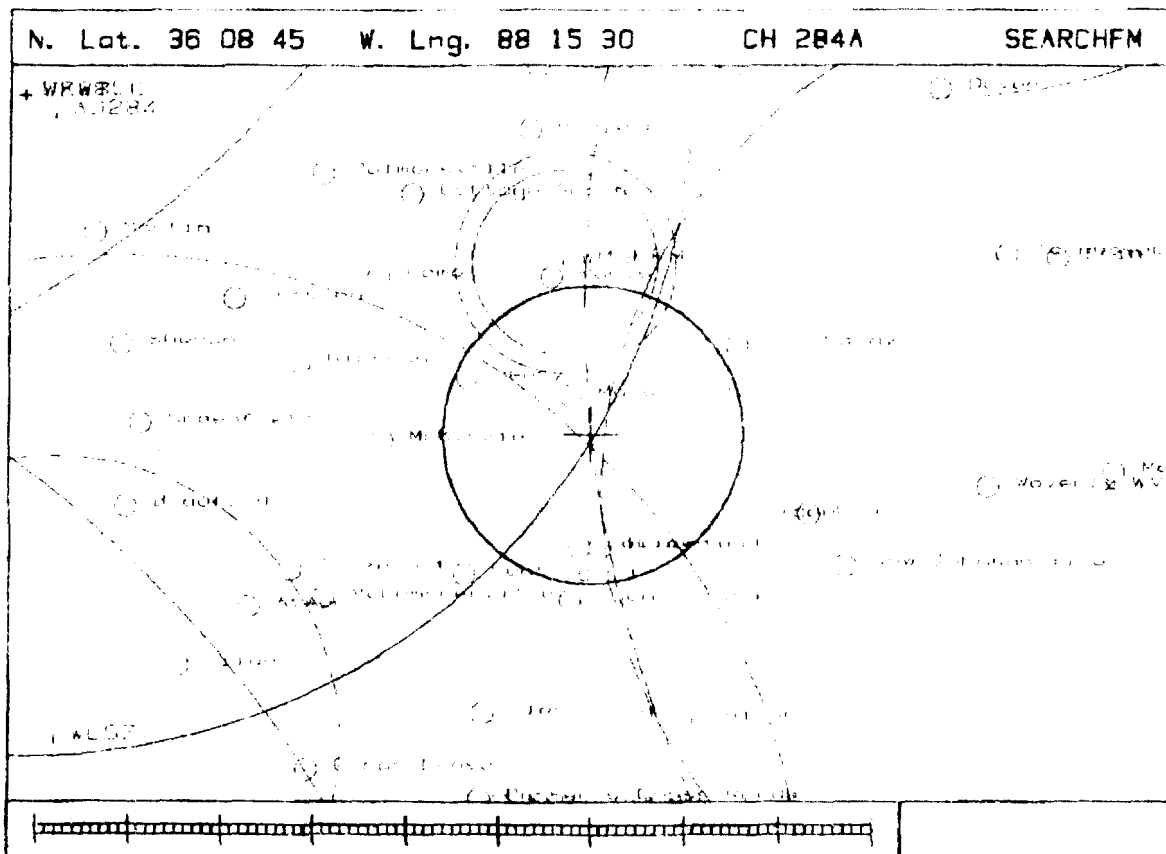
TECHNICAL REPORT

This technical report has been developed in support of reply comments in the Lexington, TN FM rulemaking. In that proceeding, a counterproposal was advanced requesting the assignment of channel 243A to Henry, TN rather than to Lexington, TN as originally proposed. An analysis has been conducted to determine whether there is an alternate channel which could be assigned at Henry, TN to eliminate the conflict. That analysis revealed that FM channel 284A may be assigned at arbitrary coordinates:

N 36-08-45 W 88-15-30 (15.75 km southeast of Henry).

In view of Henry's size (population only 317), a full facility class A operating at 6 kw ERP and 100 meters HAAT would place a 70 dBu contour over the city. The distance of 15.75 km was calculated utilizing the Commission's FM distance algorithms and the published coordinates for Henry. A full facility class A (6 kw-100 meters HAAT) produces a uniform 70 dBu of 16.3 km which will place it a full .55 km past the Henry, TN reference point (N36-12-12 W 88-25-06). In fact, the attached allocation exhibit shows that the arbitrary reference point may be moved almost .1 km closer to Henry.

Although the proposed allocation is 98.3 km short to a proposed upgrade for station WKWT(FM) on 284C2 at Union City, TN, the Commission has issued a final report and order in that proceeding, and declined to allocate 284C2 to Union City clearing the way for the use of 284A at Henry.




HENRY, TN

Call	CH#	Location		D-KM	Azi	FCC	Margin
AD284	284C2	Union City	TN	67.70	300.8	186.0	-98.30
WKWT.C	285A	Union City	TN	71.58	300.9	72.0	-0.42
WKWT	285A	Union City	TN	71.63	300.9	72.0	-0.37
DE285	285A	Union City	TN	71.63	300.9	72.0	-0.37
WGFK	283C1	Gallatin	TN	132.94	83.7	133.0	-0.06
WTNV.A	281C1	Jackson	TN	75.90	223.1	75.0	0.90
WTNV	281C1	Jackson	TN	75.90	223.1	75.0	0.90
WTNV.A	281C1	Jackson	TN	75.90	223.1	75.0	0.90
WVRV	286C2	Waverly	TN	56.48	96.1	55.0	1.48
WMUFFM	231C3	Paris	TN	18.90	350.7	12.0	6.90
WMUFFM	231A	Paris	TN	18.90	350.7	10.0	8.90
WLSZ	287A	Humboldt	TN	86.88	240.2	31.0	35.99
WAVJ	285A	Princeton	KY	113.92	18.1	72.0	41.92
WRVRFM	283C1	Memphis	TN	179.31	232.5	133.0	46.31
WFXD	285C2	Juka	MS	152.44	184.7	106.0	46.44
KYRX	284A	Chaffee	MO	164.67	313.5	115.0	49.67
DE284	284A	Chaffee	MO	164.67	313.5	115.0	49.67

It is concluded that FM channel 284A may be assigned to Henry, TN in compliance with the Commission's Section 73.207 FM separation requirements, and that a 70 dBu contour will be placed over the entire community of Henry.

10-2-95

A handwritten signature in cursive script, appearing to read "Charles M. Anderson", is written over a horizontal line.

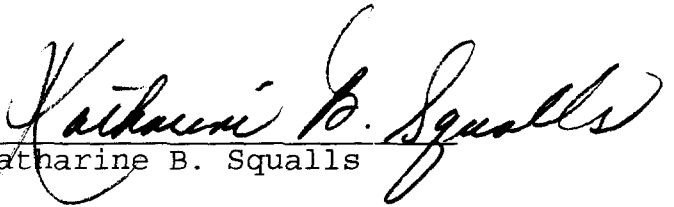
Charles M. Anderson

CERTIFICATE OF SERVICE

I, Katharine B. Squalls, hereby certify that a true and correct copy of the foregoing Reply Comments of Floriplex, Inc." was sent by first-class postage prepaid mail this 3rd day of October 1995 to the following:

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Katharine B. Squalls